TELECOMMUNICATIONS/Bell Checklist to Meet Public Interest Test

SUBJECT: **Telecommunications Competition and Deregulation Act of 1995 . . . S. 652. Pressler motion to table the McCain amendment No. 1261.**

ACTION: MOTION TO TABLE AGREED TO, 68-31

SYNOPSIS: As reported, S. 652, the Telecommunications Competition and Deregulation Act of 1995, will amend telecommunications laws and reduce regulations in order to promote competition in the telecommunications industry by eliminating barriers that prevent telephone companies, cable companies, and broadcasters from entering one another's markets. It will also permit electric utilities to enter the cable and telephone markets. Judicial control of telecommunications policy, including the "Modified Final Judgment" regime, will be terminated.

The McCain amendment would require the FCC to find that a Bell Operating Company's (BOC's) compliance with the checklist of conditions in this bill that a BOC must meet before it may provide interLATA services is sufficient to meet the public interest, convenience, and necessity determination that this bill will also require the FCC to make before a BOC may provide interLATA services. (A LATA, or local access and transport area, defines the boundaries within which a BOC currently may operate. A BOC may provide phone service within the boundaries of individual LATAs, but it may not provide service between LATAs. (The bill will also require Bell interLATA services to be provided through subsidiaries; the McCain amendment would not affect this third requirement.)

Debate was limited by unanimous consent. Following debate, Senator Pressler moved to table the McCain amendment. Generally, those favoring the motion to table opposed the amendment; those opposing the motion to table favored the amendment.

Those favoring the motion to table contended:

We do not share our colleagues' confidence in deregulation. Unfettered competition got the United States into the Great Depression, and Government action, pursuing the public interest, got the United States out of it. The original 1934 Communications

(See other side)

YEAS (68)

Republicans (27 or 51%)	Democrats (41 or 89%)	
Ashcroft	Akaka	Kennedy
Bennett	Biden	Kerrey
Bond	Bingaman	Kerry
Campbell	Boxer	Kohl
Chafee	Bradley	Lautenberg
Cohen	Bryan	Leahy
D'Amato	Bumpers	Levin
Gorton	Byrd	Lieberman
Grams	Conrad	Mikulski
Grassley	Daschle	Moseley-Braun
Hatfield	Dodd	Moynihan
Hutchison	Dorgan	Murray
Inhofe	Exon	Nunn
Jeffords	Feingold	Pell
Kassebaum	Feinstein	Pryor
Lott	Ford	Reid
Lugar	Glenn	Robb
Murkowski	Harkin	Rockefeller
Nickles	Hollings	Sarbanes
Pressler	Inouye	Simon
Roth		Wellstone
Snowe		
Specter		
Stevens		
Thompson		
Thurmond		
Warner		

NAYS (31)

Republicans (26 or 49%)	Democrats (5 or 11%)
Abraham	Baucus
Brown	Breaux
Burns	Graham
Coats	Heflin
Coverdell	Johnston
Craig	
DeWine	
Dole	
Domenici	
Faircloth	
Frist	
Gramm	
Gregg	
Hatch	
Helms	
Kempthorne	
Kyl	
Mack	
McCain	
McConnell	
Packwood	
Santorum	
Shelby	
Simpson	
Smith	
Thomas	

NOT VOTING (1)

Republicans (1)	Democrats (0)
Cochran-[2]	

EXPLANATION OF ABSENCE:
1—Official Buisiness
2—Necessarily Absent
3—Illness
4—Other

SYMBOLS:
AY—Announced Yea
AN—Announced Nay
PY—Paired Yea
PN—Paired Nay

Act, which we are amending with this bill, mentions the "public interest" and "convenience" no less than 73 times. Our predecessors had it right--they understood that some advances in technology should reach all Americans; no one should be left behind. They did not want telephones to be something for urbanites and the wealthy. Letting the free market determine where to offer services and at what prices would have left people behind. Similarly, we remind our colleagues that something was formed in those years called the Rural Electrification Administration (REA), which made sure that rural communities had electricity. Without the REA, electric companies had no incentive, and no plans, to provide electricity to areas that did not have as many customers.

Advances are being made in the telecommunications industry that are gradually eliminating the need for regulations. As it becomes ever more possible for services to be provided from multiple sources, it becomes ever more advisable to reduce or eliminate regulations. However, we must exercise great caution in this transition period. Some companies have market advantages that others do not have. Also, market decisions are not the only decisions that need to be taken into consideration.

With BOC's, two problems surface. First, their size may make it possible for them to move aggressively into long-distance service and to begin to establish dominance in the field. Soon they may comprise the major share of the local and the long-distance markets. Our fear is that instead of more competition we may wind up with less. With just a few companies from which services are available, prices and service will inevitable suffer. Second, as a public policy matter, we do not like the idea of a few large companies having a large share of the United States market because of the influence they could then gain over other sectors of the telecommunications market. For example, if these phone companies become heavily involved in cable services, they may have the ability to dictate the cable fare for most of America. Instead of receiving a diversity of viewpoints, Americans may find their media following a single homogenized bias.

Issues such as concentration and the effect of local control would be considered by the FCC in applying the public interest test to BOC entry into the long-distance market. The FCC has great experience in applying this test fairly. Frankly, we are surprised at our colleagues' objection to its inclusion. The "public interest," the notion that some private goods that are found to serve a greater public good should be under Government regulation to ensure that public good is protected, has long been recognized and applied. During the Great Depression, Congress wisely acted to ensure that all Americans would have phone service. Without Government involvement, companies had no plans to provide service to rural communities. Stretching a wire from farm to farm to hook up a few customers, when thousands could be hooked up with the same amount of wire in a city, made it uneconomical to even consider bringing phones to rural America. Other industries that have been regulated to protect the public interest include the electric and airline industries.

The mixed results of the recent deregulation of the airline industry should serve as a strong note of caution to Senators. Overall, consumers may have benefitted, but there have been definite losers. Customers on busy, longer routes, such as between New York and Los Angeles, have seen prices drop. Airlines compete for these customers vigorously. The result has been that they often subsidize these flights, and increase the cost of less popular flights. The intent of regulation has been reversed; instead of making busier routes subsidize flights to more remote areas of the country, we now have a situation where remote areas must subsidize flights on well-travelled routes. Middle- and short-distance flights from places like the District to South Carolina and West Virginia are now rare and expensive; it is now even impossible to take a jet from the District to West Virginia. At the same time, for a few pennies more, it is possible to fly all the way across the country. This situation makes no sense--the public interest has not been protected.

We are determined to see that the same result does not come from the deregulation of the telecommunications industry. BOC entry into the long-distance market needs to be carefully monitored. Accordingly, we urge our colleagues to table the McCain amendment.

Those opposing the motion to table contended:

The McCain amendment would effectively eliminate an unjust competitive restriction on BOC's. This restriction, the vague "public interest" test, has had a sorry history of restraining progress, raising prices, and limiting access to emerging technologies. Adding this restriction to the bill broke a compromise agreement. That compromise agreement, though it placed regulatory restrictions on BOC's, was acceptable because those restrictions were clearly intended to enhance competition. The McCain amendment would restore the compromise agreement. Specifically, it would require the FCC to certify that a BOC has met the public interest test if it has complied with the checklist requirements.

This bill contains three hurdles that Bell operating companies and no other companies must surmount before they may compete in long-distance telecommunication markets. First, they must use affiliates to provide long-distance services. Second, they must meet a 14-point checklist of steps that they must take to ensure that their local phone-service areas are open to competition. Third, they must receive an FCC benediction that their providing long-distance phone services is in the "public interest." We oppose having any restrictions; we think it is in the public interest to allow any companies to compete in the free market without Government meddling. Some of our colleagues disagree; they favor careful Government control of certain industries.

It was our understanding that the compromise between our two positions would be that BOC's would have to meet the first two requirements. As long as they operated through separate affiliates and made sure that their local phone service markets were open to competition, they could enter the long-distance market. The first requirement is acceptable to us because it is not particularly burdensome, and the second requirement, to meet the checklist requirements, is acceptable because it is intended to create more

competition in local phone-service markets. However, the third, "public interest" requirement, which was surprisingly added at the last minute in violation of the compromise agreement, is completely unacceptable.

The public interest standard, which has been used by Federal regulators for over 60 years, is extremely burdensome. Some Senators seem to find comfort in the fact that the FCC has been using this standard for so long in regulating the communications industry; we find much to fear. As an example, we point to FCC action on cellular phones. In the 1970's AT&T asked the FCC to allocate spectrum for such phones. The FCC mulled that action over for 10 years before finally giving the go ahead. Cellular phone service since that time has exploded. Mobile phone service is now available virtually everywhere in the country. When the FCC finally made its ruling, it was under the requirement that it show that its ruling was not "arbitrary or capricious." After 10 years of hearings, rulemakings, comments, and replies, the FCC decided that it would let the American people have cellular phones, because it had decided such a service might be in their interests. The "arbitrary and capricious" standard, though, does not mean that there has to be any public support for an FCC decision. Instead, all it means is that the FCC must have given an issue careful consideration before arriving at an opinion. The "public interest," in reality, is what a regulatory body says it is. Our colleagues tell us not to worry about the FCC making a ruling that is not in the public interest, because this bill will require even greater FCC analysis before it will reach a ruling. Instead of simply making the FCC show that it did not act arbitrarily, it will require it to show it had substantial evidence in reaching its conclusion. If it took the FCC 10 years to reach a decision under the former standard, we imagine it would have taken it much longer to reach a decision under this new proposed standard. It is unlikely, if a substantial evidence test had been in effect, that anyone would have cellular phones now, because the FCC would still be mulling the issue over.

Generally, the "public interest" that has been defended by regulating an industry has been defined as an interest in making sure that everyone has roughly equal and affordable access to the services of that industry. The 60-years of regulation of the telecommunications industry have been aimed at ensuring that rural and poor Americans had access to phones. Over the years, the regulatory scheme launched by Congress in the 1930's has created a labyrinth system of subsidies between regulated phone monopolies. After 60 years, 93 percent of all households now have phone service. Our colleagues have illogically concluded from this fact that without Federal regulations this level of service would not have been reached. However, the United States Census Bureau also reports that 99 percent of all American homes have radios, 98 percent have televisions, and 75 percent have video cassette recorders. We note for our colleagues that Americans managed to acquire these items without the "benefit" of Federal regulations. Senators who favor regulation of telecommunications also fail to note that of those 7 percent of Americans who do not have telephones, 75 percent are poor, despite the fact that billions of dollars of subsidies are paid each year largely to make sure that poor people have phone service.

Phone, electric, airline, and similar industries have been regulated because the Government decided that without its involvement these services would not be widely available to all Americans. The Government decided, in its infinite wisdom, that they would not ever be cheap enough for poor people, and that industries would never find a way to provide them economically to rural people, without Government interference in the marketplace. This reasoning was challenged with the deregulation of the airlines industry. The result has been more flights at less cost. The President's Council of Economic Advisors reports that the benefit to consumers of deregulation so far is $100 billion. Particular airlines are making less money because they no longer have guaranteed routes, guaranteed prices they may charge, and guarantees of no competition. They must now compete. Some companies have failed, and some new companies have formed. Our colleagues are upset that airlines no longer have government-guaranteed monopoly profits; we are pleased. Other of our colleagues are upset that airlines no longer provide uneconomical jet flights on short trips, such as from Washington, DC to West Virginia. We regret the inconvenience West Virginian Senators may suffer from having to fly on less comfortable propeller planes, but we do not at all regret no longer having to subsidize their flights. Some Senators have suggested that flights to South Carolina have lessened and become more expensive. On the first claim, flights from Washington to South Carolina have gone up 16 percent, and the number of seats has gone up 50 percent. Further, one-way tickets are still available for as little as $249.

Airline deregulation has been a success despite the fact that one may have expected rural airline service, in particular, to end without subsidies because of the costs of providing that service to fewer customers. With telecommunications there is no reason to expect any service to suffer because advances in the industry, including in satellite communications, will make it just as economical to provide services to rural areas as it is to provide it to urban areas. A "public interest" test to redistribute wealth so as to make telecommunications affordable for everyone makes no sense for this industry.

It especially does not make sense to have this test apply only to BOC's. Every other company in America will be permitted to compete in the long-distance market. BOC's do not pose some special malevolent threat to the public good. Our goal should be simply to ensure a free market in both local and public telecommunication services. Applying a special, discriminatory public interest test to BOC's is both unfair and against the public interest. Therefore, we oppose the motion to able the McCain amendment.